

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GRACIELA R. GARCIA,
Plaintiff,

v.

BIG LOTS STORES, INC.,
Defendant.

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CIVIL ACTION NO. 4:21-cv-00837
JURY TRIAL DEMANDED

**BIG LOTS STORES, INC.
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1441 and Federal Rule of Civil Procedure 81, Defendant BIG LOTS STORES, INC., ("*Defendant*") hereby removes to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), BIG LOTS STORES, INC. sets forth the following "short and plain statement of the grounds for removal."

A. THE REMOVED CASE

1. The removed case is a civil action filed with the 111TH Judicial District Court of Webb County, Texas, on or about February 9, 2021; styled *Graciela R. Garcia v. BIG LOTS STORES, INC.*; Cause No. 2021CVF000276D2 (the "State Court Action"). The case arises from an alleged injury allegedly sustained by Graciela R. Garcia on March 27, 2020 while in Defendant's store located in Laredo, Webb County, Texas.

B. DOCUMENTS FROM REMOVED ACTION

2. Pursuant to Local Rule 81 and 28 U.S.C. 1446(a), BIG LOTS STORES, INC. attaches the following documents to this Notice of Removal as Exhibit “A”:

- i. Index of Matters Being Filed;
- ii. The State-Court Action’s docket sheet.
- iii. All executed service of process in the case;
- iv. All pleadings asserting causes of action (e.g., petitions, counterclaims, cross actions, third-party actions, interventions and all answers to such pleadings) served on Defendant; and
- v. a list of all counsel of record, including addresses, telephone numbers and parties presented.

C. REMOVAL PROCEDURE

3. Except as otherwise expressly provided by Act of Congress, any civil action brought in a State Court of which the district courts of the United States have original jurisdiction may be removed to the district court of the United States for the district and division embracing the place where the action is pending. 28 U.S.C. § 1441. The Houston Division of the Southern District Court of Texas is the United States district and division embracing Webb County, Texas, the county in which the State Court Action is pending.

4. Plaintiff’s Original Petition (“Petition”) was filed on February 9, 2021, and BIG LOTS STORES, INC. was served with a copy of Plaintiff’s Original Petition (“Petition”) less than thirty days before the filing of this Notice, through its registered agent. Thus, this Notice of Removal is filed within the time limits specified in 28 U.S.C. § 1446(b).

5. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders in the State Court Action as of the date of this pleading are attached hereto as Exhibit "A" and incorporated herein for all purposes.

6. Defendant will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the 111th Judicial District Court of Webb County, Texas, where the action is currently pending.

D. VENUE IS PROPER.

7. The United States District Court for the Southern District of Texas is the proper venue for removal of the state court action pursuant to 28 U.S.C. § 1441(a) because the 111th Judicial District Court of Webb County, Texas, is located within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division.

E. COMPLETE DIVERSITY OF CITIZENSHIP EXISTS.

8. This is a civil action that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

9. As admitted in the Petition, Plaintiff is an individual who resides in Webb County, Texas.¹

10. Defendant, BIG LOTS STORES, INC. is a foreign corporation organized and existing under the laws of the State of Ohio.

¹ See Plaintiff's Original Petition (Exh. 1) at 1, ¶ 3.

11. Because the Plaintiff is a resident and citizen of the State of Texas and Defendant is not, complete diversity of citizenship exists between all parties as required by 28 U.S.C. § 1332 for purposes of diversity jurisdiction. Thus, this Court has jurisdiction over the parties based on diversity of citizenship.

F. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED.

12. Plaintiff alleges in her Petition that she seeks monetary damages “of \$250,000 or less.”² Plaintiff also seeks to recover damages against Defendant for: (a) past and future medical expenses; (b) past and future mental anguish; (c) past and future pain and suffering; (d) lost wages and future earning capacity; (e) past and future disfigurement; and (f) past and future physical impairment.

13. Thus, based on all of the aforementioned facts, the State Court Action may be removed to this Court by Defendant in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Southern District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy exceeds \$ 75,000, exclusive of interest and costs.

G. FILING OF REMOVAL PAPERS

14. Pursuant to 28 U.S.C. § 1446(d), BIG LOTS STORES, INC. is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing

² See Plaintiff’s Original Petition at 6, ¶ 1.

a copy of this Notice with the Clerk of the 111th Judicial District Court of Webb County, Texas, in which this action was originally commenced.

H. CONCLUSION

15. Defendant, BIG LOTS STORES, INC. hereby removes the above-captioned action from the 111th Judicial District of Webb County Texas, and requests that further proceedings be conducted in the United States District Court for the Southern District of Texas, Houston Division, as provided by law.

Respectfully submitted,

MAYER LLP



Zach T. Mayer, Attorney-in-Charge
State Bar No. 24013118
zmayer@mayerllp.com

Sara J. Krumholz
State Bar No. 24060579
skrumholz@mayerllp.com

750 North Saint Paul Street, Suite 700
Dallas, Texas 75201
Telephone: 214.379.6900
Facsimile: 214.379.6939

**ATTORNEYS FOR DEFENDANT
BIG LOTS STORES, INC.**

CERTIFICATE OF SERVICE

On March 12, 2021, a true and correct copy of the foregoing has been forwarded to all counsel of record as follows:

Richard Jason Nava
State Bar No. 24083552
2107 Shiloh Drive
Laredo, Texas 78405

Email: eserviceRJN@nava-lawgroup.com

COUNSEL FOR PLAINTIFF

- ☐ E-Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Regular, First Class Mail
- ☒ E-File and Serve
- ☐ E-Service Only
- ☐ Certified Mail/Return Receipt Requested



Sara J. Krumholz